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9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT SEATTLE

12 MICHAEL MAYFIELD, on behalf of
13 himself and others similarly situated,

14 Plaintiff,

15 v.

16 ACE AMERICAN INSURANCE CO.

17 Defendant.

18 CASE NO. C18-1695 RSM

19 **STIPULATED
20 PROTECTIVE ORDER**

21 1. PURPOSES AND LIMITATIONS

22 Discovery in this action is likely to involve production of confidential, proprietary, or
23 private information for which special protection may be warranted. Accordingly, the parties hereby
24 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
25 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
26 protection on all disclosures or responses to discovery, the protection it affords from public
 disclosure and use extends only to the limited information or items that are entitled to confidential
 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
 confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 Material may be deemed “CONFIDENTIAL”: if it contains or reveals trade secrets or other
3 non-public, financial, proprietary, and/or medical information of individuals other than Plaintiff
4 Michael Mayfield, or competitively sensitive information. Confidentiality designations must be
5 made in good faith.

6 Material that contains or reveals the names, addresses, and other personally identifiable
7 information of individuals other than Plaintiff Mayfield shall also be considered CONFIDENTIAL
8 material subject to all of the protections of this Stipulated Protective Order except as specifically
9 exempted herein. However, if material is deemed CONFIDENTIAL solely due to containing or
10 revealing the names, addresses, and other personally identifiable information of individuals other
11 than Plaintiff Mayfield, the designating party must affix the words “REDACTIONS ONLY” to
12 such material. If material is designated “REDACTIONS ONLY,” then the meet and confer
13 requirements of Section 4.3 shall not apply to such material. Instead, before publicly filing such
14 material, the filing party need only redact all names, addresses, and other personally identifiable
15 information of individuals other than Plaintiff Mayfield, and seek any required permission from
16 the Court to do so.

17 3. SCOPE

18 The protections conferred by this agreement cover not only CONFIDENTIAL material (as
19 defined above), but also (1) any information copied or extracted from CONFIDENTIAL material;
20 (2) all copies, excerpts, summaries, or compilations of CONFIDENTIAL material; and (3) any
21 testimony, conversations, or presentations by parties or their counsel that might reveal
22 CONFIDENTIAL material.

23 However, the protections conferred by this agreement do not cover information that is in
24 the public domain or becomes part of the public domain through trial or otherwise.

25 This agreement shall not prevent any party from applying to the Court for further or
26 additional protective orders, or from agreeing with the other parties to modify this agreement,

1 subject to the approval of the Court, including, but not limited to, such other or further protection
2 as may be required at trial or in connection with any public hearings in this matter.

3 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 4.1 Basic Principles. A receiving party may use CONFIDENTIAL material that is
5 disclosed or produced by another party or by a non-party in connection with this case only for
6 prosecuting, defending, or attempting to settle this litigation. CONFIDENTIAL material may be
7 disclosed only to the categories of persons and under the conditions described in this agreement.
8 CONFIDENTIAL material must be stored and maintained by a receiving party at a location and
9 in a secure manner that ensures that access is limited to the persons authorized under this
10 agreement.

11 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
12 by the court or permitted in writing by the designating party, a receiving party may disclose any
13 CONFIDENTIAL material only to:

14 (a) the receiving party’s counsel of record in this action, as well as employees
15 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

16 (b) the officers, directors, and employees (including in house counsel) of the
17 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
18 agree that a particular document or material produced is for ATTORNEY’S EYES ONLY and is
19 so designated;

20 (c) experts and consultants to whom disclosure is reasonably necessary for this
21 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (d) the court, court personnel, and court reporters and their staff;

23 (e) copy or imaging services retained by counsel to assist in the duplication of
24 CONFIDENTIAL material, provided that counsel for the party retaining the copy or imaging
25 service instructs the service not to disclose any CONFIDENTIAL material to third parties and to
26 immediately return all originals and copies of any confidential material;

(g) the author or recipient of a document containing the information or a
custodian or other person who otherwise possessed or knew the information.

4.3 Filing CONFIDENTIAL Material. Before filing CONFIDENTIAL material or
discussing or referencing such material in court filings, the filing party shall confer with the
designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the
designating party will remove the CONFIDENTIAL designation, whether the document can be
redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the
meet and confer process, the designating party must identify the basis for sealing the specific
CONFIDENTIAL information at issue, and the filing party shall include this basis in its motion to
seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth
the procedures that must be followed and the standards that will be applied when a party seeks
permission from the court to file material under seal. A party who seeks to maintain the
confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in
the motion to seal being denied, in accordance with the strong presumption of public access to the
Court's files.

23 || 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
25 or non-party that designates information or items for protection under this agreement must take
26 care to limit any such designation to specific material that qualifies under the appropriate

1 standards. The designating party must designate for protection only those parts of material,
2 documents, items, or oral or written communications that qualify, so that other portions of the
3 material, documents, items, or communications for which protection is not warranted are not swept
4 unjustifiably within the ambit of this agreement.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
6 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
7 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
8 and burdens on other parties) expose the designating party to sanctions.

9 If it comes to a designating party's attention that information or items that it designated for
10 protection do not qualify for protection, the designating party must promptly notify all other parties
11 that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this
13 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
14 ordered, disclosure or discovery material that qualifies for protection under this agreement must
15 be clearly so designated before or when the material is disclosed or produced.

16 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
17 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
18 the designating party must affix the word "CONFIDENTIAL" to each page that contains
19 CONFIDENTIAL material. If only a portion or portions of the material on a page qualifies for
20 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making
21 appropriate markings in the margins).

22 (b) Testimony given in deposition or in other pretrial proceedings: Transcripts
23 of any testimony given in deposition or other pretrial proceeding shall be treated as
24 CONFIDENTIAL until the expiration of 30 days after receipt of the transcript by all counsel who
25 request a copy. If counsel for any party believes that the transcript or a portion thereof contains
26 CONFIDENTIAL material, counsel shall, within the 30-day period, designate in writing the

1 specific pages and lines deemed CONFIDENTIAL or ATTORNEY'S EYES ONLY, and shall
2 notify all parties and the court reporter. Portions of testimony taken during depositions or other
3 pretrial proceeding may also be designated as CONFIDENTIAL material by counsel so stating on
4 the record during the deposition or other pretrial proceeding, and in such event no further action
5 need be taken to preserve the confidentiality of that portion (or portions) of the transcript. In the
6 event an attorney designates testimony as CONFIDENTIAL or ATTORNEY'S EYES ONLY
7 during the course of a deposition or other pretrial proceeding, the parties, attorneys, witnesses,
8 court reporters, and anyone else present at the deposition or other pretrial proceeding shall take
9 appropriate measures to protect the confidentiality of the testimony to be given, including, e.g.,
10 removing parties or persons not authorized to hear the testimony. Each page of the transcript
11 containing CONFIDENTIAL material should be marked with the appropriate confidentiality
12 designation. Portions of the transcript that have not been designated as CONFIDENTIAL will
13 become non-confidential at the expiration of the 30-day period. If a party or non-party desires to
14 protect CONFIDENTIAL information at trial, the issue should be addressed during the pre-trial
15 conference.

16 (c) Other tangible items: the producing party must affix in a prominent place
17 on the exterior of the container or containers in which the information or item is stored the word
18 "CONFIDENTIAL." When CONFIDENTIAL Material is supplied or stored on an electronic,
19 digital, or magnetic medium, the confidentiality designation shall be made, to the extent physically
20 possible, on the medium itself (such as on a label attached to a disk), on the sleeve, envelope, box,
21 or other container of the medium, and to the extent not unduly burdensome within the medium
22 itself in a manner that immediately and consistently informs those person who access the medium
23 that they have accessed CONFIDENTIAL material that is restricted from disclosure under this
24 agreement. If only a portion or portions of the information or item warrant protection, the
25 producing party, to the extent practicable, shall identify the protected portion(s).

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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the designating party's
3 right to secure protection under this agreement for such material. Upon timely correction of a
4 designation, the receiving party must make reasonable efforts to ensure that the material is treated
5 in accordance with the provisions of this agreement.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
14 regarding CONFIDENTIAL designations without court involvement. Any motion regarding
15 CONFIDENTIAL designations or for a protective order must include a certification, in the motion
16 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
17 conference with other affected parties in an effort to resolve the dispute without court action. The
18 certification must list the date, manner, and participants to the conference. A good faith effort to
19 confer requires a face-to-face meeting or a telephone conference.

20 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
21 intervention, the designating party may file and serve a motion to retain confidentiality under Local
22 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
23 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
24 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
25 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
26 the material in question as CONFIDENTIAL until the court rules on the challenge.

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party
5 must:

6 (a) promptly notify the designating party in writing and include a copy of the
7 subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena or order is
10 subject to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by
12 the designating party whose CONFIDENTIAL material may be affected.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
15 CONFIDENTIAL material to any person or in any circumstance not authorized under this
16 agreement, the receiving party must immediately (a) notify in writing the designating party of the
17 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected
18 material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
19 terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment
20 and Agreement to Be Bound" that is attached hereto as Exhibit A.

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22 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
23 MATERIAL

24 Inadvertent disclosure of any document or information shall be without prejudice to any claims
25 that such material is CONFIDENTIAL, privileged, work product or otherwise protected from
26 discovery, and shall not result in a waiver of the claim of confidentiality, privilege, or work

1 product. Any documents or information so disclosed, subject to a subsequent good faith claim of
2 inadvertent production, and of privilege, work product or other protection, shall be returned
3 immediately to the producing party and such document or information shall not be introduced into
4 evidence in this or any other proceeding without (i) consent of the producing party, or (ii) by order
5 of the Court, nor will such document or information be subject to production (other than in camera)
6 in any proceeding by virtue of the fact that it was inadvertently produced in this proceeding or in
7 any other suit filed by counsel of record. This provision is not intended to modify whatever
8 procedure may be established in an e-discovery order or agreement that provides for production
9 without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R.
10 Evid. 502(d) as set forth herein.

11 10. NON TERMINATION AND RETURN OF DOCUMENTS

12 Within 60 days after the termination of this action, including all appeals, each receiving
13 party must return all CONFIDENTIAL material to the producing party, including all copies,
14 extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
15 destruction. However, this agreement shall not be construed to cause any counsel to produce,
16 return, and/or destroy their own attorney work product, or the work product of their co-counsel.

17 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
18 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
19 deposition and trial exhibits, expert reports, and consultant and expert work product, even if such
20 materials contain CONFIDENTIAL material.

21 The confidentiality obligations imposed by this agreement shall remain in effect until a
22 designating party agrees otherwise in writing or a court orders otherwise.

23 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

24 DATED this 22nd day of March, 2019.

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

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3 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
4 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
5 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
6 documents, including the attorney-client privilege, attorney work-product protection, or any other
privilege or protection recognized by law.

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8 DATED this 27th day of March 2019.

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11 RICARDO S. MARTINEZ
12 CHIEF UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Mayfield v. ACE American Insurance Co.*, Case No. 2:18-cv-01695-RSM. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 || City and State where sworn and signed:

18 Printed name:

19 || Signature: